

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

DANIEL MARTIN MOLIERI, et al.,

No. C-10-5430 MMC

Plaintiffs,

v.

COUNTY OF MARIN, et al.,

Defendants.

**ORDER GRANTING IN PART AND
DENYING IN PART SAN FRANCISCO
DEFENDANTS' REQUEST FOR LEAVE
TO FILE MOTION FOR
RECONSIDERATION; SETTING
BRIEFING SCHEDULE**

Before the Court is "Defendants' Request for Leave to File Motion for Reconsideration on Order Denying in Part Motion for Summary Judgment" ("Request"), filed May 11, 2012 by defendants City and County of San Francisco, Sergeant James O'Malley and Sergeant Raymond Cox (collectively, "San Francisco Defendants"), by which said defendants seek reconsideration of two rulings set forth in the Court's April 16, 2012 order. Having read and considered the Request, the Court rules as follows.¹

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¹On May 15, 2012, the San Francisco Defendants filed a notice of appeal. Because the Request, filed pursuant to Civil Local Rule 7-9, is properly treated as a motion for reconsideration under Rule 59(e), see Bestran Corp. v. Eagle Comtronics, Inc., 720 F. 2d 1019, 1019 (9th Cir. 1983) (holding "timely filed motion for reconsideration under a local rule" is treated as motion for reconsideration under Rule 59(e)), and was filed prior to the notice of appeal, the Court has jurisdiction to consider it, see United Nat'l Ins. Co. v. R&D Latex Corp., 242 F.3d 1102, 1109 (9th Cir. 2001) (holding filing of notice of appeal does not divest district court of jurisdiction to consider motion for reconsideration filed prior to notice of appeal).

1 To the extent the Request seeks reconsideration of the Court's denial of summary
 2 judgment on plaintiffs' Monell claim, the Request is hereby DENIED. Contrary to the San
 3 Francisco Defendants' assertion, the Court did not fail to consider their argument that
 4 "[p]laintiffs expressly withdrew [plaintiffs'] only expert opinion in support of Monell liability."
 5 (See Req. at 4:15-24.) Such argument was not raised until their reply to plaintiffs'
 6 opposition; in their motion, the San Francisco Defendants only stated, in conclusory fashion
 7 and without elaboration, plaintiffs had "no evidence" to support the claim. Under such
 8 circumstances, the San Francisco Defendants failed to meet their burden on summary
 9 judgment, see Nissan Fire & Marine Ins. Co. v. Fritz Cos., 210 F. 3d 1099, 1105 (9th Cir.
 10 2000) (holding "moving party may not require the nonmoving party to produce evidence
 11 supporting its claim or defense simply by saying that the nonmoving party has no such
 12 evidence"), and plaintiffs had "no obligation to provide evidence in response," see id. at
 13 1107; (see also Order, filed April 16, 2012, at 13:7-12).²

14 To the extent the Request seeks reconsideration of the Court's denial of summary
 15 judgment to the individual defendants on the issue of qualified immunity, the Request is
 16 hereby GRANTED. Although the San Francisco Defendants, again, incorrectly assert the
 17 Court failed to consider their arguments, the Court finds sufficient cause to reconsider, in
 18 light of a subsequently issued Ninth Circuit opinion, Padilla v. Yoo, — F. 3d —, 2012 WL
 19 1526156 (9th Cir. 2012).

20 Accordingly, the Court hereby sets the following briefing schedule and hearing on
 21 the issue of the individual defendants' qualified immunity :

22 1. No later than June 1, 2012, the San Francisco Defendants shall either (a) file a
 23 statement that the points and authorities as submitted in the Request sufficiently set forth
 24 their position on the issue or (b) file a supplemental memorandum not to exceed ten pages
 25 in length.

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28 ²By such ruling, the Court makes no finding as to whether plaintiffs in fact are able to
 raise a triable issue with respect to Monell liability.

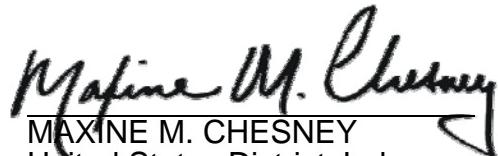
1 2. No later than June 15, 2012, plaintiffs shall file any opposition, not to exceed ten
2 pages in length.

3 3. No later than June 22, 2012, the San Francisco Defendants shall file any reply,
4 not to exceed five pages in length.

5 4. The hearing on the matter is set for July 6, 2012, at 9:00 a.m.

6 **IT IS SO ORDERED.**

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8 Dated: May 22, 2012
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MAXINE M. CHESNEY
United States District Judge

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